

209772

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LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532

ENTERED
Office of Proceedings

JAN 05 2003

Part of
Public Record

January 5, 2004

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington, DC 20423

RE: Finance Docket No. 34438, *Huron & Eastern Railway Company, Inc.—Acquisition
and Operation Exemption—Central Michigan Railway Company*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 CFR § 1150.41, three diskettes with the file Notice.doc, and check 171062 covering the \$1,400.00 filing fee. Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger. Please note that the map in Exhibit C is in color.

If you have any questions, please call or email me.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Gitomer'.

Louis E. Gitomer
Attorney for Huron & Eastern Railway
Company, Inc.

Enclosure

FILE RECEIVED

FILED

JAN 05 2003

SURFACE
TRANSPORTATION BOARD



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34438

HURON & EASTERN RAILWAY COMPANY, INC.—ACQUISITION AND OPERATION
EXEMPTION—CENTRAL MICHIGAN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, *et seq.*

Gary A. Laakso, Esq.
Counsel
Huron & Eastern Railway Company, Inc.
5300 Broken Sound Boulevard N.W.
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(561) 994-6015

Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for HURON & EASTERN
RAILWAY COMPANY, INC.

Dated: January 5, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34438

HURON & EASTERN RAILWAY COMPANY, INC.—ACQUISITION AND OPERATION
EXEMPTION— CENTRAL MICHIGAN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, *et seq.*

The Huron & Eastern Railway Company, Inc. (“HESR”), a Class III rail carrier, files this Verified Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E, *Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers*, for exemption from the prior approval requirements of 49 U.S.C. § 10902 to permit HESR, pursuant to contract, to acquire and continue to operate 99.87 miles of railroad line from the Central Michigan Railway Company (“CMRY”) consisting of the Midland Sub, between milepost 0.0 and milepost 15.0; between Durand, milepost 0.0, and Wheeler, milepost 3.5; between Genesee, milepost 101.3, and Paines, milepost 96.0; between I-75, milepost 17.21, and CSX Yard, milepost 18.07; between Durand, milepost 69.2, and M21, milepost 80.8; the Anderson Lead between milepost 79.2 and milepost 81.4; the Owosso Industrial Track between milepost 80.1 and milepost 0.7; between Marquette, milepost 0.0, and Prairie, milepost 1.7; between Essexville CMR Bridge, milepost 0.0, and Pine St., milepost 2.87; between Wheeler, milepost 3.5, and MDOT ownership, milepost 5.0; and the HECLA Belt line between the east line of Patterson Street in West Bay City, MI, milepost 1.9, and the end of the line at milepost 2.8, a distance of 1,750 feet (all collectively referred to as the “Line”), and acquiring the right to operate between the South End of North Bay City Yard,

milepost 55.77, and the North End of North Bay City Yard at the Centerline of Bangor Road, milepost 2.62.¹

HESR is also acquiring incidental trackage rights over: (1) Grand Trunk Western Railroad Company (a) over the Saginaw subdivision between milepost 0.00 and milepost 0.60, (b) over the Holly-Grand Rapids subdivision between milepost 65.50 and milepost 69.00, and (c) the Flint Subdivision between milepost 253.0 and milepost 255.4; (2) Detroit & Mackinac Railway Company ("D&M") a distance of about 5.75 miles from D&M's junction with CMRY near Total Refinery in Bay City, MI, north to a point near milepost 3.4 and the Kawkawlin River in Kawkawlin, MI; (3) CSX Transportation, Inc. ("CSXT") for overhead trackage rights over approximately 2.9 miles of rail line owned by CSXT from milepost BBO 7 at or near the Mershon Switch east to milepost CB 1 near the Saginaw Yard (a distance of approximately 1.7 miles), then from milepost CB 1 southeast to milepost CC 2.2, at or near the Hoyt Diamond (a distance of approximately 1.2 miles), at which point HESR would connect with the former CMRY main line; and (4) CSXT for about 4.0 miles in Saginaw, MI, from the clearance point at the intersection of the CMRY/CSXT connection track of the Grand Rapids Wye Track, through CSXT's Saginaw main, yard, and connection trackage to CSXT's ownership point at the connection with HESR at Saginaw (milepost CBB 2.0) on CSXT's Bad Axe Subdivision.

HESR is accepting assignment of trackage rights over the lines of CMRY that have been granted to CSXT, Lake State Railway Company, Tuscola and Saginaw Bay Railway Company,

¹ This is the entire rail trackage of the CMRY, except for the 1.77-mile segment recently approved for abandonment in *Central Michigan Railway Company-Abandonment Exemption-in Saginaw County, MI*, STB Docket No. AB-308 (Sub-No. 3X) (STB served October 31, 2003) (the "Abandonment Decision").

and any other agreed upon trackage rights that have received appropriate regulatory approval or exemption.

§ 1150.43 Information to be contained in notice for small line acquisitions.

- (a) The full name and address of the Class III rail carrier applicant.

Huron & Eastern Railway Company, Inc.
101 Enterprise Drive
Vassar, MI 48768

- (b) The name, address, and telephone number of the representative of the applicant who should receive correspondence.

Louis E. Gitomer, Esq.
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, DC 20005
(202) 638-3307

- (c) A statement that an agreement has been reached or details about when an agreement will be reached.

An agreement between HESR and CMRY has been reached.

- (d) The operator of the property.

HESR will operate the property.

- (e) A brief summary of the proposed transaction, including:

- (1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant.

Central Michigan Railway Company
1424 Straits Drive
Bay City, MI 48706-8705

- (2) The proposed time schedule for consummation of the transaction.

HESR plans to acquire the Line on or after January 25, 2004.

(3) The mileposts of the subject property, including any branch lines.

The rail line being acquired by HESR consists of the Midland Sub, between milepost 0.0 and milepost 15.0; between Durand, milepost 0.0, and Wheeler, milepost 3.5; between Genesee, milepost 101.3, and Paines, milepost 96.0; between I-75, milepost 17.21, and CSX Yard, milepost 18.07; between Durand, milepost 69.2, and M21, milepost 80.8; the Anderson Lead between milepost 79.2 and milepost 81.4; the Owosso Industrial Track between milepost 80.1 and milepost 0.7; between Marquette, milepost 0.0, and Prairie, milepost 1.7; between Essexville CMR Bridge, milepost 0.0, and Pine St., milepost 2.87; between Wheeler, milepost 3.5, and MDOT ownership, milepost 5.0; and the HECLA Belt line between the east line of Patterson Street in West Bay City, MI, milepost 1.9, and the end of the line at milepost 2.8, a distance of 1,750 feet, and acquiring the right to operate between the South End of North Bay City Yard, milepost 55.77, and the North End of North Bay City Yard at the Centerline of Bangor Road, milepost 2.62.

HESR is also acquiring incidental trackage rights over: (1) Grand Trunk Western Railroad Company (a) over the Saginaw subdivision between milepost 0.00 and milepost 0.60, and (b) over the Holly-Grand Rapids subdivision between milepost 65.50 and milepost 69.00,² and (c) the Flint Subdivision between milepost 253.0 and milepost 255.4; (2) Detroit & Mackinac Railway Company ("D&M") a distance of about 5.75 miles from D&M's junction with CMRY near Total Refinery in Bay City, MI, north to a point near milepost 3.4 and the

² *Central Michigan Railway Company—Acquisition and Operation Exemption—Certain Lines of Grand Trunk Western Railroad Company*, ICC Finance Docket No. 31059 (ICC served July 13, 1987).

Kawkawlin River in Kawkawlin, MI;³ (3) CSX Transportation, Inc. ("CSXT") for overhead trackage rights over approximately 2.9 miles of rail line owned by CSXT from milepost BBO 7 at or near the Mershon Switch east to milepost CB 1 near the Saginaw Yard (a distance of approximately 1.7 miles), then from milepost CB 1 southeast to milepost CC 2.2, at or near the Hoyt Diamond (a distance of approximately 1.2 miles), at which point HESR would connect with the former CMRY main line;⁴ and (4) CSXT for about 4.0 miles in Saginaw, MI, from the clearance point at the intersection of the CMRY/CSXT connection track of the Grand Rapids Wye Track, through CSXT's Saginaw main, yard, and connection trackage to CSXT's ownership point at the connection with HESR at Saginaw (milepost CBB 2.0) on CSXT's Bad Axe Subdivision.⁵

HESR is accepting assignment of trackage rights over the lines of CMRY that have been granted to CSXT,⁶ Lake State Railway Company,⁷ Tuscola and Saginaw Bay Railway Company,⁸ and any other agreed upon trackage rights that have received appropriate regulatory approval or exemption.

(4) The total route miles being acquired.

³ *Central Michigan Railway Company—Trackage Rights Exemption--Detroit & Mackinac Railway Company*, ICC Finance Docket No. 32404 (ICC served December 14, 1993).

⁴ *Central Michigan Railway Company and CSX Transportation, Inc.—Joint Relocation Project Exemption—in Saginaw, MI*, STB Finance Docket No. 34021 (STB served May 17, 2001).

⁵ *Central Michigan Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34241 (STB served August 29, 2002).

⁶ *CSX Transportation, Inc.—Trackage Rights—Grand Trunk Western Railroad Company*, ICC Finance Docket No. 31114 (ICC served September 29, 1987).

⁷ *Lake State Railway Company—Trackage Rights Exemption—Central Michigan Railway Company*, ICC Finance Docket No. 32018 (ICC served February 27, 1992).

⁸ *Tuscola and Saginaw Bay Railway Company—Acquisition and Operation Exemption—Grand Trunk Western Railroad Incorporated and Central Michigan Railway Company*, STB Finance Docket No. 33822 (STB served April 12, 2000).

HESR is acquiring approximately 99.87 route miles, and trackage rights over about 16.55 miles.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states.

See Exhibit C (colored map).

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under §1150.45.

HESR hereby certifies that HESR's projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

(h) Certification that the projected annual revenue of the rail lines to be acquired and operated together with the acquiring carrier's projected annual revenues will not exceed \$5 million.

Not applicable. The projected annual revenue of the rail lines to be acquired from CMRY and operated together with the HESR's projected annual revenues will exceed \$5 million. On November 26, 2003, HESR certified to the Board that it had complied with the notice requirements of 49 C.F.R. § 1150.42(e). See Exhibit A.

(i) Labor protection.

Under 49 U.S.C. § 10902(d), labor protection is not to be imposed since a Class III railroad is acquiring the Line.

(j) Environmental and historic documentation.

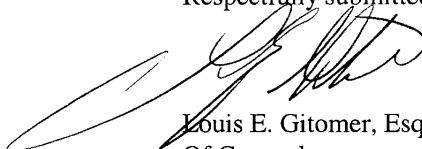
This transaction qualifies for classification under 49 C.F.R. §1105.6(c)(2) and thus neither an Environmental Assessment nor a Historic Report is required to be filed.

(k) Caption Summary.

See Exhibit B.

Gary A. Laakso, Esq.
Counsel
Huron & Eastern Railway Company, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Respectfully submitted,



Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for HURON & EASTERN
RAILWAY COMPANY, INC.

Dated: January 5, 2004

VERIFICATION

State of Florida)
)ss
County of Palm Beach)

I, Larry W. Bush, being duly sworn, depose and state that I am Vice President – Treasurer of the Huron & Eastern Railway Company, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.

Larry W Bush

Subscribed and sworn to before me this 5th day of December 2003.

Kristin Dunlap
Notary Public

My Commission expires:

Dec. 27, 2005

PERSONALLY KNOWN: X
PRODUCED I.D.:



Kristin Dunlap
My Commission DD067657
Expires December 27, 2005

EXHIBIT A – LABOR NOTICE

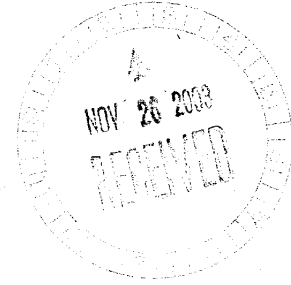
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lgitomer@dc.bjllp.com

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532

November 26, 2003

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington, DC 20423

RE: Finance Docket No. 34438, *Huron & Eastern Railway Company, Inc.—Acquisition and Operation Exemption—Central Michigan Railway Company*

Dear Secretary Williams:

The Huron & Eastern Railway Company, Inc. ("HESR") hereby certifies that on November 26, 2003, HESR posted the attached Notice at the workplace of the employees on the rail line that is the subject of this transaction served a copy of the Notice on the national offices of all labor unions with employees on the affected line. An original and ten copies of this letter and attachment are enclosed.

Please time and date stamp the extra copy of this letter and return it with our messenger.

If you have any questions, please call or email me.

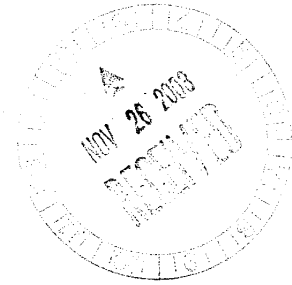
Sincerely yours,

Louis E. Gitomer
Attorney for Huron & Eastern Railway
Company, Inc.

Enclosure

November 26, 2003

Huron and Eastern Railway Company, Inc.
101 Enterprise Drive
Vassar, MI 48768



NOTICE TO EMPLOYEES OF
CENTRAL MICHIGAN RAILWAY COMPANY

Pursuant to Surface Transportation Board regulations at 49 C.F.R. § 1150.42(e), Huron and Eastern Railway Company, Inc. ("Huron & Eastern") hereby provides notice to the employees of Central Michigan Railway Company ("Central Michigan") that Huron & Eastern intends to acquire and operate substantially all of the lines of railroad currently owned by Central Michigan, effective January 25, 2004.

As a result of the acquisition, Huron & Eastern expects to hire approximately 14 operating employees and approximately 21 other employees to perform mechanical, signal, maintenance, and other functions. It is expected that 29 positions will be based in Saginaw-Bay City and 6 in Durand. This estimate is preliminary and is subject to modification prior to commencing operations. Huron & Eastern is still in the process of finalizing internal projections about the anticipated level of traffic that will be in place at the time of the start of its operations. The actual number of employees hired will depend in part on the results of those projections and may be higher or lower than the number of positions set forth above. Employees will be provided competitive short line wages and benefits comparable to those at Huron & Eastern.

With respect to benefits, Huron & Eastern will offer:

- Profit Sharing Plan
- Medical and Dental insurance
- Life Insurance
- 401(k) Plan
- Short Term Disability
- Long Term Disability
- Employee Stock Purchase Plan
- Employee Assistance Program
- Flexible Spending
- Sick Leave
- Holidays
- Vacation

Huron & Eastern will select employees on the basis of skills and aptitudes required for each position. Huron & Eastern will select employees on the basis of some or all of the following criteria and other considerations: (1) demonstrated work ethic that is customer-driven and customer-oriented; (2) commitment and ability to work within a team environment; (3) demonstrated stable work history and commitment to safety; (4) commitment to being accountable for work product; (5) ability to communicate effectively, both orally and in writing; (6) relevant work experience and ability to perform duties, with or without reasonable accommodation, required for a particular job; (7) results of personal interview(s); and (8) demonstration of relevant work skills through non-discriminatory testing. No one factor listed above will be determinative in the employee selection process.

The most qualified candidates will be selected from the available pool of applicants without regard to race, creed, color, religion, national origin, sex, age, marital status, disability, veteran National Guard or military reserve status, and any other protected characteristic. All applicants will submit to a background check and, those successful applicants who have been conditionally offered positions, will be required to pass a pre-employment drug and alcohol screen, complete a medical questionnaire, and pass a physical exam.

Central Michigan employees interested in seeking employment with Huron & Eastern Railway should contact Jack Bixby at 989/823-0090, ext. 28.

This Notice is being posted in accordance with the requirements of 49 C.F.R. § 1150.42(e) which requires the posting of a notice of intent to undertake a proposed transaction under 49 U.S.C. § 10902 that will result in a Class III rail carrier with projected annual revenues in excess of \$5 million at the workplace of the employees of the affected railroad line(s) at least 60 days before the notice of exemption relating to the proposed transaction becomes effective. A copy of this Notice is being served by overnight delivery on the national offices of the labor unions with employees on the affected railroad line(s), and service concurrently certified to the Surface Transportation Board.

BALL JANIK LLP

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1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

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FACSIMILE 202-783-6947

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532

lgitomer@dc.bjllp.com

November 26, 2003

Robert A. Scardelletti,
President
Transportation Communications International Union
3 Research Place
Rockville, MD 20850

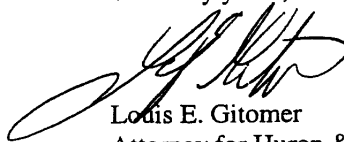
RE: Finance Docket No. 34438, *Huron & Eastern Railway Company, Inc.—Acquisition
and Operation Exemption—Central Michigan Railway Company*

Dear President Scardelletti:

Pursuant to 49 C.F.R. §1150.42(e), Huron & Eastern Railway Company, Inc. is
serving on you a notice of its intent to undertake the proposed transaction.

If you have any questions, please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for Huron & Eastern Railway
Company, Inc.

Enclosure

EXHIBIT B – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB FINANCE DOCKET NO. 34438

HURON & EASTERN RAILWAY COMPANY, INC.—ACQUISITION AND OPERATION
EXEMPTION—CENTRAL MICHIGAN RAILWAY COMPANY

The Huron & Eastern Railway Company, Inc. (“HESR”), a Class III rail carrier has filed a notice of exemption to acquire from the Central Michigan Railway Company (“CMRY”) and to operate the railroad line consisting of the Midland Sub, between milepost 0.0 and milepost 15.0; between Durand, milepost 0.0, and Wheeler, milepost 3.5; between Genesee, milepost 101.3, and Paines, milepost 96.0; between I-75, milepost 17.21, and CSX Yard, milepost 18.07; between Durand, milepost 69.2, and M21, milepost 80.8; the Anderson Lead between milepost 79.2 and milepost 81.4; the Owosso Industrial Track between milepost 80.1 and milepost 0.7; between Marquette, milepost 0.0, and Prairie, milepost 1.7; between Essexville CMR Bridge, milepost 0.0, and Pine St., milepost 2.87; and between Wheeler, milepost 3.5, and MDOT ownership, milepost 5.0, and acquiring the right to operate between the South End of North Bay City Yard, milepost 55.77, the North End of North Bay City Yard at the Centerline of Bangor Road, milepost 2.62; and the HECLA Belt line between the east line of Patterson Street in West Bay City, MI, milepost 1.9, and the end of the line at milepost 2.8, a distance of 1,750 feet, a distance of about 99.87 miles; and to acquire and operate trackage rights over about 16.55 miles, as follows: (1) over Grand Trunk Western Railroad Company (a) over the Saginaw subdivision between milepost 0.00 and milepost 0.60, and (b) over the Holly-Grand Rapids subdivision between milepost 65.50 and milepost 69.00, (c) the Flint Subdivision between milepost 253.0 and milepost 255.4; (2) over Detroit & Mackinac Railway Company (“D&M”) a distance of

about 5.75 miles from D&M's junction with CMRY near Total Refinery in Bay City, MI, north to a point near milepost 3.4 and the Kawkawlin River in Kawkawlin, MI; (3) over CSX Transportation, Inc. ("CSXT") for overhead trackage rights over approximately 2.9 miles of rail line owned by CSXT from milepost BBO 7 at or near the Mershon Switch east to milepost CB 1 near the Saginaw Yard (a distance of approximately 1.7 miles), then from milepost CB 1 southeast to milepost CC 2.2, at or near the Hoyt Diamond (a distance of approximately 1.2 miles), at which point HESR would connect with the former CMRY main line; and (4) over CSXT for about 4.0 miles in Saginaw, MI, from the clearance point at the intersection of the CMRY/CSXT connection track of the Grand Rapids Wye Track, through CSXT's Saginaw main, yard, and connection trackage to CSXT's ownership point at the connection with HESR at Saginaw (milepost CBB 2.0) on CSXT's Bad Axe Subdivision. HESR is accepting assignment of trackage rights over the lines of CMRY that have been granted to CSXT, Lake State Railway Company, Tuscola and Saginaw Bay Railway Company, and any other agreed upon trackage rights that have received appropriate regulatory approval or exemption.

Comments must be filed with the Board and served on Louis E. Gitomer, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005, (202) 638-3307.

The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

EXHIBIT C - MAP

